

AUG 22 1997

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**Federal Communications Commission**

In the Matter of)

Advanced Television Systems)
and Their Impact upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

To: The Commission

SUPPLEMENT TO PETITION FOR RECONSIDERATION

This supplement is filed by the Brechner family, which owns Delmarva Broadcast Service General Partnership (licensee of station WMDT-TV, Channel 47, Salisbury, Maryland) and Northeast Kansas Broadcast Service, Inc. (licensee of station KTKA-TV, Channel 49, Topeka, Kansas), in connection with the Brechner family's June 13, 1997 Petition for Reconsideration of aspects of the Commission's *Sixth Report and Order* in this proceeding.

In the Brechner family's June 13, 1997 petition for reconsideration, we commented on the difficulties, potential extra expense, competitive disadvantages, and likely serious business impact on our stations that could result from the fact that one or both of our two stations' DTV assignments may ultimately prove to be outside the "core spectrum." This would necessitate what has been termed in the industry as a "double move" of one or both of our stations' DTV frequencies, during or at the conclusion of the transition to DTV. We stressed the need for the Commission to provide broadcasters that confront such a "double move" problem with maximum flexibility, including

maximum availability of frequency options, in resolving this problem, and proposed several suggestions to minimize the impact on stations subject to a “double move” requirement.

In a June 13, 1997 petition for partial reconsideration submitted by Davis Television Topeka, LLC, et al. (“Davis Television”), it has been requested that the Commission take steps to reserve DTV frequencies for those NTSC channels as to which applications are currently pending, but for which no construction permit has yet been issued. In our view, the Commission should not take such action, at least until all existing broadcasters who face the possibility of a “double move” requirement have first been accommodated with a post-transition DTV channel of their choosing that is within the ultimate “core” spectrum that the Commission adopts for DTV broadcasting.

By way of background, Davis Television last year requested a waiver of the major market “freeze” on NTSC applications, and concurrently filed for an NTSC channel to broadcast to the Topeka television market. The Commission has not yet determined whether or not to grant Davis’s waiver request, nor has Davis’s application been opened to competing applications from other parties. Despite the tenuous status of Davis’s application for a Topeka market station, Davis has sought a commitment from the FCC regarding how, and when, its proposed NTSC facility “will participate” in DTV transition, and has suggested that its proposed facility should be granted a DTV channel allocation. Indeed, Davis has even requested that it be permitted to bypass the construction or operation of an NTSC station, if its application is ultimately accepted pursuant to a rule waiver, and if Davis ultimately obtains a construction permit for the facility. Instead, Davis asks that it be allowed to construct only a DTV facility, if its NTSC application is ultimately accepted and granted by the Commission.

We must oppose such reasoning and logic on several grounds. As an initial matter, recent applicants for NTSC channels, such as Davis, have been on clear notice from the Commission that they would not, at the outset, be allotted a DTV channel, and that they could not be guaranteed ultimate access to such a channel, even after the transition. Moreover, it is important that the FCC resolve all issues of frequency assignment for those stations currently on the air, prior to addressing issues involving recent NTSC applicants who have not even been authorized to construct an NTSC facility, much less done so. Existing broadcasters such as the Brechner family have proven their commitment to, and investment in, their service areas by providing NTSC broadcast service for many years. As the Commission has frequently recognized, and as Congress reaffirmed in the Telecommunications Act of 1996, it is existing NTSC broadcasters who must be relied on to lead the way into the new era of digital television broadcasting, and to surmount the many difficulties involved in making the transition from NTSC to DTV service. Existing broadcasters will bear the heavy costs of the conversion to DTV, including the cost of operating dual NTSC and DTV facilities during the transition period. They will also confront the difficulties and expense of adapting existing equipment to meet DTV requirements. In all of these ways, existing NTSC broadcasters will drive the transition to DTV with their own very substantial economic investments in the transition process. Put simply, existing broadcasters will have the most invested, will have the largest equitable stake, and will have the most to lose if their ultimate DTV channel proves inadequate or inferior to competing facilities. Those who have merely applied (late) for an NTSC channel, and who now ask that their application be treated, in effect, as a premature application for a DTV channel, have none of these equities on their side.

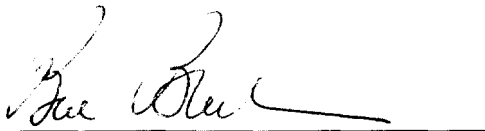
As we noted in our original petition for reconsideration, our stations -- one or both of which will, under proposed rules, be subject to a "double move" requirement -- will face many certain and potential problems in identifying, and perhaps in obtaining, an appropriate post-transition "core" spectrum DTV channel. Once a post-transition channel is obtained, there will be many more hurdles involving purchasing and installing the appropriate new equipment, as well as marketing the new channel and making viewers aware of the channel shift. It is our firm belief that on-air, operating stations potentially subject to a "double move" requirement must be accorded the maximum flexibility possible in choosing their post-transition, permanent "core" DTV channel, as well as appropriate compensation (as discussed in our original petition). All channel options for such operating stations must be preserved until the matter of their ultimate, permanent DTV channel is finally resolved. Prior to deciding on the permanent DTV channels for operating channels, the Commission should not even consider potential DTV allocations for applications for vacant NTSC channels -- particularly those applications which, as a result of the lateness of their filing, would require a waiver of Commission rules even to be processed and made subject to potential future competing applications.

In addition, to suggest that a late NTSC applicant could become a DTV licensee without ever constructing and operating their proposed NTSC station is contrary to the entire thrust of the transition period rules the Commission has adopted. Such a "free pass" to go directly to DTV operations would create an unfair competitive advantage for those who least deserve it -- applicants that have not invested in providing broadcast service to the public and who now seek to be spared the obligation to do their part in maintaining the availability of NTSC service during the transition period. Existing NTSC broadcasters will face the burden of technical, programming, and administrative planning and costs to operate, as the FCC is requiring, both an NTSC and a DTV

station for as many as six or more years, while consumers make the transition from NTSC to DTV. New entrants should be expected to do no less.

For these reasons, the Commission should not grant the requests that have been made by Davis Television (or any other, similar requests), at least until all existing broadcasters are assigned an acceptable, permanent DTV channel that is within the "core" DTV spectrum ultimately chosen. To do otherwise would harm the interests of operating stations in markets such as Topeka and Salisbury -- particularly those stations (such as both of the Brechner family's stations) that face possible "double move" requirements. Given the contributions these existing stations will be expected to make in achieving a successful transition to DTV, it would be contrary to the public interest to provide more favorable, competitively advantageous regulatory treatment to mere applicants who have as yet contributed nothing in the way of existing broadcast service and nevertheless seek special dispensation from providing NTSC service and what amounts to their "first preference" from among the remaining available DTV channels that might be used in a given market either during or after the transition period.

Respectfully submitted

A handwritten signature in dark ink, appearing to read "Berl Brechner", written over a horizontal line.

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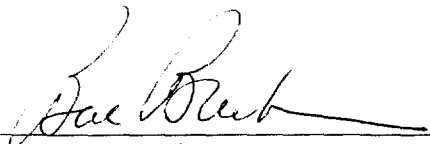
Date: August 22, 1997

CERTIFICATE OF SERVICE

I, Berl Brechner, do hereby certify that on this 22nd day of August, 1997, a copy of the foregoing "Supplement to Petition for Reconsideration" has been sent by first class mail, postage prepaid, to the following:

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